IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

CIVIL WRIT No. 507 of 2007

ASHOK KUMAR SHARMA
V/S
RENT APPELLATE TRIBUNAL & RS.

Mr. SURESH SHRIMALI, Mr. RAJESH CHOUDHARY, for the appellant / petitioner

Mr. DC PANWAR, for the respondent

Date of Order : 11.5.2007

HON'BLE SHRI N P GUPTA,J.

ORDER

Heard learned counsel for the petitioner, perused the impugned judgments.

The learned Tribunal and the learned lower Appellate Tribunal have decreed the petition of the landlord for eviction on the ground of default in payment of rent for a period of more than 4 month.

The case of the landlord was that the petitioner is tenant since 1996, the premises are commercial, and the monthly rent agreed was Rs.500/- per month, however, in view of the provisions of Rent Control Act 2001, the petitioner is liable to pay the rent with permissible increased rate. It is alleged that the petitioner was given a registered notice demanding arrears of rent, and rent from April 2003 onwards at the enhanced rate of Rs.50/- as

is required to be paid under the Act, but the tenant has not paid the amount. Other ground taken was that the premises are reasonably and bonafidely required by the landlord.

Learned Tribunal deciding issue No.2 regarding reasonable and bonafide necessity found that the landlord has failed to prove the reasonable and bonafide necessity. However, while deciding issue No.1, it has been found that the landlord has given registered notice, Ex.1, which was sent vide Ex.2, and served vide Ex.3, this was given on 16.8.2003, and was received on the same day, and the tenant was called upon to pay the rent within 15 days. The bank account number of landlord was also informed. However, the rent was not paid within 30 days, and therefore, the petitioner was found to be defaulter. It was found that the landlord has admitted that he has paid rent since January 2002. However, subsequently, rent upto January 2004 has been deposited in the bank account. It has been found by the learned Tribunal that the demand of rent at the rate of Rs.750/- after commencement of the New Rent Control Act was wrong on the part of the landlord. However, since the rent was not paid since January 2002, the tenant has been found to be the defaulter. This finding has been affirmed by the learned lower Appellate Tribunal.

It was contended by learned counsel for the

petitioner, relying upon the judgment of Hon'ble the Supreme Court in Chimanlal Vs. Mishrilal reported in AIR 1985 SC 136, that since the notice made an illegal demand of rent @ Rs.750/- per month, as unless the rent was so determined by the Court under Section 6, the landlord, of his own, has no right to demand the rent at enhanced rate, the notice was bad, and since that notice was bad, the petitioner was not under any obligation to comply with that notice, and therefore, if he has not complied with the notice, the order for eviction could not be passed.

I have considered the submission.

True it is that the landlord could not demand the arrears of rent @ Rs.750/- per month unless the same was determined by the Court, but then that is not the whole thing, inasmuch as, a look at the notice, Ex.1, which has been produced here as Annex.2, shows that it was alleged therein that the rent was demanded from October 2000 to March 2003 @ Rs.500/- per month, and thereafter @ Rs.750/- per month. It is not in dispute on the side of the petitioner that at the time the notice was served, the rent upto December 2001 only had been deposited in the Court under Section 19A and 19CC, and not thereafter. In that view of the matter, the rent was in arrears since January 2002 at least and upto March 2003 it was claimed by the landlord @ Rs.500/- per month. Admittedly, this period

exceeds four months, and a look at the provisions of Section 9 shows that the liability of eviction is attracted if the tenant has neither paid, nor tender the amount of rent due for him for four months subject to the provisos appended thereto. Significantly, it is not the requirement that the four months' rent should be due for the period immediately preceding the date of the suit, of course the rent should be for the period within limitation from the date of filing of the application. Since the period from January 2002 to March 2003 exceeds the period of four month, therefore, it cannot be said that for the purpose of Section 9(1) notice suffers from any infirmity even within the meaning of judgment of Hon'ble the Supreme Court in Chiman Lal's case.

It may be observed that it is admitted position that the amount of rent from January 2002 to March 2003 has not been paid within 30 days of the receipt of the notice Ex.1, and therefore, the petitioner is clearly established to have incurred liability of eviction on the ground of default, as contemplated in Section 9(1) of the Act. Therefore, I do not find any sufficient ground to interfere with the order of eviction.

The writ petition thus, has no force, and is dismissed summarily.

However, at the request of the learned counsel for the petitioner, the petitioner is given one year's time to vacate the suit premises on the condition that the defendant gives an undertaking before the learned trial court within one month from today that on or before the expiry of the above period, he will peacefully hand over the vacant possession of the suit premises to the plaintiff and that during this period, he will not, in any manner, transfer the possession of the suit premises to anybody. Likewise, the entire decreetal amount, so also all arrears of rent, if any, shall be deposited by the petitioner in the trial court within one month from today and shall further continue to deposit amount equal to the monthly rent by way of damages for use and occupation by 15th of each succeeding month, till the actual delivery of possession. In case the petitioner fails to comply with any of the above conditions, the respondent will become automatically entitled to execute the decree forthwith.

(N P GUPTA),J.

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